

STREET, J.]

[Feb. 20.]

CRANSTON v. BLAIR.

Execution—Setting aside—Order for costs—Non-service of—Notice of taxation, absence of—Irregularity—Re-taxation.

The defendant obtained an order dismissing the action with costs for non-prosecution, upon notice to the plaintiff, who did not appear upon the motion. The defendant did not serve the plaintiff with a copy of the order, and went on and taxed his costs without notice to the plaintiff, and issued execution for the amount taxed.

Held, no ground for setting aside the execution that the order had not been served before the taxation.

Hepton v. Robertson, 23 Q.B.D. 126 (*n*), distinguished.

Held, also, that the absence of a notice of taxation was not an irregularity entitling the plaintiff to set aside the execution, but only to a re-taxation of the costs.

Lloyd v. Kent, 5 Dowl. P.C. 125, followed.

W. H. Blake for the plaintiff.

Middleton for the defendant.

BANK OF HAMILTON v. ESSERY.

[Mar. 7.]

[Noted for THE CANADA LAW JOURNAL.]

Judgment debtor—Extent of examination of—Motion to commit—Appeal from examiner.

This was a motion by plaintiff to commit defendant for unsatisfactory answers on his examination as a judgment debtor. The defendant had sold his stock-in-trade to his wife and one Brown, a bill of sale having been regularly executed and registered some time before the judgment was obtained.

The examiner ruled that the plaintiff could not examine as to the disposition of the goods after the date of the bill of sale.

It was contended that the motion was improperly launched, and should have been by way of appeal from the examiner.

Held, that defendant could not shield himself under the examiner's ruling, and that the motion was properly made.

Orpen v. Kerr, 11 P.R. 128, distinguished.

Held, also, that defendant must attend at his own expense and submit to be examined as to disposition of goods after date of bill of sale.

A. McLean Macdonell for plaintiffs.

Jas. Reeve, Q.C., for defendant.